DOCUMENT RESUME

ED 377 635 EC 303 563

AUTHOR Ahearn, Kathy A.; And Others
TITLE Guidelines for School Districts Regarding the Rights of Students under Section 504 of the Rehabilitation Act of 1973.
INSTITUTION New York State Education Dept., Albany.
PUB DATE Nov 93
NOTE 49p.; Appendix contains filled print.
PUB TYPE Guides - Non-Classroom Use (055) -- Legal/Legislative/Regulatory Materials (090)

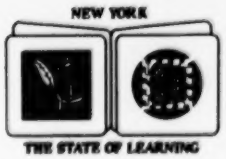
EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Access to Education; Boards of Education; Civil Rights Legislation; *Compliance (Legal); *Disabilities; Discipline Policy; Due Process; *Educational Legislation; *Educational Policy; Elementary Secondary Education; *Federal Legislation; Federal Regulation; Guidelines; Pupil Personnel Services; School Districts; Standards; State Legislation; *Student Rights
IDENTIFIERS Americans with Disabilities Act 1990; Individuals with Disabilities Education Act; New York; *Rehabilitation Act 1973 (Section 504)

ABSTRACT

This memorandum to school administrators and other program directors in New York State summarizes guidelines regarding the rights of students with disabilities under Section 504 of the Rehabilitation Act of 1973 and its relation to Article 89 of New York's Education Law and the federal Individuals with Disabilities Education Act (IDEA). Specific issues addressed include: provisions of Section 504 relating to elementary, middle, and secondary education; school board policies and procedures pursuant to Section 504; comparison of Section 504 and IDEA; Section 504 and the right to free appropriate public education (FAPE); establishing policies to address mandates under all three of these laws pertaining to FAPE for students with disabilities; procedures for children under Section 504 who do not require special education or related services; assessment teams; accommodation plans; due process; discipline of children with disabilities covered by Section 504; and access to nonacademic and extracurricular services. An addendum notes implications of the Americans with Disabilities Act (ADA) for school districts. An appendix includes: (1) the regulations for relevant provisions of Section 504; (2) a memo regarding students with attention deficit disorder; (3) a chart comparing IDEA, Section 504, and ADA in relation to FAPE; and (4) specific forms for complying with Section 504. (DB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED 377 635



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☑ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy

November, 1993

TO: District Superintendents
Presidents of Boards of Education
Superintendents of Schools
Superintendents of State-Operated and State-Supported Schools
Executive Directors of Approved Private Schools
Nonpublic School Administrators and Educators
New York City Board of Education
State and Local Teacher Associations
Principals of Public Schools
Directors of Pupil Personnel Services
Directors of Special Education
Chairpersons of Committees on Special Education
Chairpersons of Committees on Preschool Special Education
School Social Workers and School Psychologists
Colleges with Special Education Teacher Training
Commissioner's Advisory Panel for Special Education Services
Preschool Special Education Advisory Committee
Impartial Hearing Officers
SETRC Project Directors and Training Specialists
Early Childhood Direction Centers
Directors of Approved Preschool Programs and Preschool Educators
Head Start Directors
Chief Elected Officials of the Counties
Independent Living Centers
Student and Parent Advocacy Networks
Team Leaders and Managers with Comparable Responsibilities

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
New York State Education Dept.
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

FROM: Kathy A. Ahearn, Lawrence J. Gloeckler & Arthur L. Walton

SUBJECT: Guidelines for School Districts regarding the rights of students under §504 of the Rehabilitation Act of 1973

This memorandum has been prepared in response to inquiries regarding the application of §504 of the Rehabilitation Act of 1973 (§504) to local school districts and its relationship to Article 89 of the Education Law and the federal Individuals with Disabilities Education Act (IDEA). To assist local school districts in developing

EC 303563

BEST COPY AVAILABLE

comprehensive §504 policies, this memorandum offers guidelines that integrate procedures under the IDEA and Article 89 of the Education Law as well as model §504 forms.

Summary of the Provisions of §504 of the Rehabilitation Act Relating to Elementary, Middle and Secondary Education

In essence, §504 provides that:

> "No otherwise qualified individual with handicaps in the United States,...shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance..."

The definition of a "handicapped person[1]" under §504 is broader than the definition of "a child with a disability" under IDEA and Article 89 of the Education Law. Under the Rehabilitation Act a handicapped person includes anyone who:

(i) has a physical or mental impairment which substantially limits one or more major life activities,
(ii) has a record of such an impairment, or
(iii) is regarded as having such an impairment (34 CFR 104.3[j][1])[2].

(§34 CFR 104.3[k][2])

In contrast, under the IDEA, children with disabilities include "children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and who, by reason thereof **need special education and related services** (20 USC 1401[a][1]; emphasis added). Under Article 89 of the Education Law, children with disabilities include those who, because of mental, physical or emotional reasons can only receive appropriate educational opportunities from a program of special education (Educ. Law §4401[1]).

---

[1]Throughout this memorandum, the term "handicapped child under §504" is referred to interchangeably as "a child with a disability under §504."

[2]A copy of relevant portions of the §504 regulations cited throughout this document, are attached.

Unlike §504, under IDEA and Article 89, a child must first be identified as a student with a disability under one of thirteen disabilities enumerated in Commissioner's regulations (See 8 NYCRR 200.1(mm)). Consistent with the general scheme, children with disabilities under §504 who require special education or related services to benefit from instruction should be classified as a child with a disability under IDEA and Article 89 of the Education Law while those students who are protected under §504 who do not require such services are, nonetheless, entitled to those accommodations deemed necessary to ensure access to all public school programs and activities. In summary, although every child who is a student with a disability under IDEA is also protected under §504, all children covered under §504 are not necessarily students with a disability under IDEA.

School Board Policies and Procedures Pursuant to §504

As a general matter, §504 requires that all school districts provide written assurances of nondiscrimination in any application for federally funded programs (34 CFR 104.5(a)). School districts with fifteen or more employees are also required to designate an employee to coordinate §504 compliance and adopt grievance procedures to resolve §504 complaints (34 CFR 104.7[a]). In addition, such districts must provide notice of nondiscrimination to participants, beneficiaries, applicants and employees, including those with impaired vision or hearing, and to unions or professional organizations holding collective bargaining or professional agreements with the recipients (34 CFR 104.8). Districts must also provide annual notice of the school board's responsibilities under §504 to students with disabilities and their parents (34 CFR 104.32(b)).[3] Therefore, to ensure compliance with federal regulations promulgated pursuant to §504, all school districts should adopt comprehensive §504 policies.

Comparing §504 of the Rehabilitation Act and the Individuals with Disabilities Education Act

The IDEA is a federal statute that allocates federal funds to states and local school districts that ensure the right to a free appropriate public education to infants, toddlers and children with disabilities in a manner consistent with federal mandates. Unlike IDEA, §504 of the Rehabilitation Act is a federal civil rights statute that provides no additional funding but prohibits discrimination against qualified individuals with disabilities of all ages by any "program or activity receiving federal funds"[4] (29 USC §794). As a further distinction, §504 protections extend not only

---

[3]A copy of a model student §504 policy is attached in the Appendix.

[4]For example, in Rothschild v. Grottenhaler, 907 F2d 286 (2nd Cir. 1990), the United States Court of Appeals held that §504 requires school districts to provide

to students, but to job applicants, employees and all individuals, otherwise eligible, to participate in school sponsored programs or activities. For example, §504 mandates that all programs and activities receiving federal funds provide full access[5] to protected individuals and requires all school buildings constructed or altered after June 3, 1977 to provide physical access to persons with physical disabilities (34 CFR 104.21-23). Thus, while the IDEA imposes affirmative duties on state and local educational agencies to provide an appropriate education to students with disabilities as a condition for receiving federal funds, §504 forbids the exclusion of protected individuals from their programs or activities solely on the basis of a disability.

Complaints for alleged violations of §504 may be filed with the United States Office for Civil Rights (OCR) and a finding of continuing noncompliance may result in the loss of all federal funds where voluntary compliance cannot be obtained. In addition, parents[6] may request under §504 an impartial hearing to challenge a district's determination concerning their children. Similarly, under IDEA and Article 89 of the Education Law, parents may request an impartial hearing to challenge any matter pertaining to the identification, evaluation or placement of their child. In addition, they may file a written complaint with the State Education Department pertaining to alleged systemic or procedural violations under IDEA that are not a subject of pending litigation.

§504 and the Right to Free Appropriate Public Education

Federal regulations implementing §504 define the obligations of elementary and secondary education programs and activities to provide a free appropriate public education (FAPE) to all children with disabilities protected by the Act and require public schools to establish standards and procedures for the evaluation and placement

---

deaf parents of nonhearing-impaired students with sign language interpreters for school initiated conferences incident to disciplinary/academic aspects of their children's education. See also 8 NYCRR 100.2(aa) (copy attached).

[5]Although an LEA must ensure that its programs and activities are readily accessible to individuals with disabilities, §504 does not require the district "to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons." Even though the regulation does not require the LEA to make structural changes in existing facilities where other methods are effective in providing program access, "a recipient must give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate" (34 CFR 104.22) (Similar regulatory language governing program accessibility has been adopted under the ADA (28 CFR 35.149-151).

[6]The term "parent" used throughout this memorandum includes "persons in parental relationship" to the child.

of persons, who because of disability, need or are believed to need special education or related services (34 CFR 104.31-39)[7].

Under §504, a FAPE is defined as ". . . the provision of regular or special education and related aids and services that... is designed to meet the individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met..." (34 CFR 104.33, emphasis added). Under IDEA, however, FAPE is defined as "special education and related services ... provided in conformity with an individualized education program ..." (34 CFR 300.8) in a manner "reasonably calculated to enable the child to receive educational benefit..." (Board of Education v. Rowley, 458 U.S. 176, 207).

Section 504 regulations governing the provision of FAPE generally mirror the regulations promulgated under the IDEA. In fact, §504 regulations indicate that following IDEA procedures is one way to meet the requirements of §504 (34 CFR 104.36). Notably, however, the §504 regulations do not extend to parents the right to an independent evaluation at public expense, specifically require a reevaluation before a school district initiates "a significant change in a student's placement," and has no provision that automatically requires a school district to maintain a student in his/her current educational placement pending due process.

Consistent with §504, children with disabilities who do not require special education or related services (and are, therefore, not classified under IDEA or Article 89) are, nonetheless, entitled to accommodations and services in the regular school setting that are necessary to enable them to benefit from all programs and activities available to non-disabled children. Similar to IDEA, regulations implementing §504 require the evaluation of any child, who because of a disability "needs or is believed to need special education or related services" prior to an initial placement and any subsequent "significant change of placement" as well as periodic reevaluations of students who are receiving special education and related services (34

---

[7]For purposes of preschool, elementary and secondary education, a "qualified" student with a disability under §504 is defined as a person with a disability who is:

(i) of an age during which non-handicapped persons are provided such services,

(ii) of an age during which it is mandatory under state law to provide such services to handicapped persons, or

(iii) to whom a state is required to provide a free appropriate public education... (under the IDEA).

Since preschool children with disabilities are entitled to FAPE, their rights are protected by IDEA and §504.

CFR 104.35(b)).[8] In addition, all decisions involving placements of children protected under §504 must be made by a group of individuals, including persons knowledgeable about the child, the meaning of the evaluation data and the placement options (34 CFR 104.35(c)(3)). While not required, the §504 regulations recognize that implementing an IEP under the IDEA is one way to meet its standards for providing FAPE (34 CFR 104.33(b)(2)). Those regulations also require notice to parents of any proposed actions relating to the provision of a free appropriate public education (FAPE) and ensure parents the right to an impartial hearing to challenge any actions regarding the identification, evaluation or educational placement of a child who, because of a disability, needs or is believed to need special instruction or related services (34 CFR 104.36).

Establishing Policies and Procedures to Address Mandates under §504, the IDEA and Article 89 of the Education Law Pertaining to the Provision of a Free Appropriate Public Education for School Age Students with Disabilities

Under State law, any student suspected of having a disability under §504 who may require special education or related services must be afforded all the protections of Article 89 of the Education Law. For example, under State law any student suspected of having a disability requiring special education or related services must be referred to the committee on special education (CSE) for evaluation (Education Law §4402[b][2]); 8 NYCRR 200.4[a]). Following an evaluation, where the CSE determines that a student with a disability under §504 requires special education or related services, the child is, by definition, a student with a disability under Article 89.

Where the CSE determines that a student does not need special education or related services, Commissioner's regulations require the committee to provide the student's building administrator with a copy of its recommendations and the appropriate evaluation information (8 NYCRR 200.4(c)(l)(i)). In addition, for students not classified by the CSE, the Commissioner's regulations require the building administrator to determine which educationally related support services may be appropriate to provide to the student to the extent that the services are available (8 NYCRR 200.4(c)(1)(i)). Since §504 regulations specifically recognize that following the IDEA procedures (and, therefore, Article 89) meet §504 mandates, a

[8]According to the Office for Civil Rights, a school district is not required to automatically conduct an evaluation under §504 upon a parent's request. However, when the LEA has reason to believe the child needs special education or related services, the LEA must evaluate the child to determine whether he or she is disabled as defined in §504. However, where the district refuses to evaluate a student upon a parent's request, the LEA must notify the parents of their right to due process (Memorandum, United States Department of Education, To Regional Civil Rights Directors, From Jeanette Lim, April 29, 1993).

board of education may want to use its CSE to also recommend to the building administrator any adaptations it deems necessary to enable a student who is disabled under §504 to benefit from the regular school program. In that way, a board of education can meet its §504 obligations using the existing state regulatory scheme for those children who, although, referred to the CSE for special education or related services are found not to need them, yet require certain accommodations as a protected student under §504. Although use of the CSE process is one way for a BOE to meet its §504 responsibilities to this group of students, this should not be read as transforming those additional CSE functions into special education duties under Article 89.

To comply with §504, local policies should also include safeguards to ensure that students who are disabled under §504 are not categorically excluded from the process of referral, evaluation, classification or placement under Article 89 on the basis of a medical diagnosis not included among the classifications enumerated in Part 200 of the Commissioner's regulations (i.e., ADD, AIDS, etc.). Regardless of the medical diagnosis, when the CSE determines that such a student needs special education or related services to benefit from instruction, in most cases, the child should be classified under Part 200 of the Commissioner's regulations as a student with a disability. For example, a child diagnosed ADD who needs special education or related services may be classified, as appropriate, under IDEA and Article 89, learning disabled, other health impaired or emotionally disturbed. Perhaps the only exception to classifying a student under Article 89 who requires special education or related services applies to children with "temporary disabilities" who need special education, related services, or adaptive physical education as a temporary measure under §504.

Where the CSE determines that a student who is disabled under §504 does not require special education or related services and is, therefore, not a student with a disability under Article 89 of the Education Law, the parent has the right to challenge that determination at an impartial hearing (8 NYCRR 200.5(c)). If the parent disagrees with the CSE's evaluation, the parent also has a right to obtain an independent evaluation, which must be provided at public expense unless the district establishes the adequacy of its evaluation at an impartial hearing (8 NYCRR 200.5(a)(1)(vi)(a)).

In summary, students believed to require special education or related services to benefit from instruction who are protected under §504 must be evaluated, identified and placed in an appropriate program/placement in accordance with Part 200 of the Commissioner's regulations.

Procedures for Children with Disabilities under §504 who do not Require Special Education or Related Services

For children protected under §504, who are referred to the CSE and determined not to require special education or related services (who are, therefore, not disabled under Article 89), a board policy could delegate to the building administrator the obligation to implement the CSE's recommendations for alternatives to special education.

Assessment Teams[9]

For children who are disabled under §504 who do not appear in need of special education or related services, a board could establish procedures to refer the child directly to a building level team for assessment to meet §504 standards. Consistent with the regulations promulgated under §504, a BOE may elect to use either its CSE or a building level team comprised of individuals knowledgeable about the child, the evaluations and the program options to make decisions relating to FAPE upon its assessment of the child's disability and his/her need for services (34 CFR 104.35).

Accommodation Plans

In most cases, the use of appropriate adaptations and interventions in regular classes will enable school districts to effectively address the instructional needs of children with disabilities protected by §504, without the need for special education or related services. Such adaptations may include, for example:

> providing a structured learning environment, repeating and simplifying instructions about in-class and homework assignments; supplementing verbal instructions with visual instructions; using behavioral management techniques, adjusting class schedules, modifying test delivery; using tape recorders, computer aided instruction, and other audiovisual equipment; selecting modified textbooks or workbooks and tailoring homework assignments.
>
> Other provisions range from... classroom aides and notetakers;... [to] possible modification of nonacademic times such as lunchroom, recess, and physical education."

[9]A model form is attached in the Appendix.

(See SED Memorandum on "Update on Students with Attention Deficit Disorders," dated May 1992. A copy is attached in the Appendix.)

To assure students with disabilities under §504 access to regular school programs and activities, appropriate services might also include, for example, educationally related support services, classroom aides, or speech and language improvement services. In addition, a child protected under §504 who is not eligible for special education under Article 89 of the Education Law may receive services in a resource room in accordance with the Part 200 regulations (See 8 NYCRR 200.6[f]). For children previously classified under Article 89, who no longer require special education or related services, declassification support services may offer an appropriate accommodation.

Due Process

Under §504, parents of students with disabilities not classified under Article 89, are entitled to notice regarding actions affecting the identification, evaluation or educational placement of their children and may request an impartial hearing if they disagree with a determination regarding FAPE (34 CFR 104.36).[10] Although a district may elect to use impartial hearing officers certified by the Department pursuant to Part 200 of the regulations to decide §504 disputes, neither state law nor §504 mandates that only state certified hearing officers can serve. In any case, to meet minimum impartiality requirements, any person who participated in any manner in the formulation of the decision to be reviewed may not serve as the hearing officer (34 CFR 104.36).

In summary, by ensuring that every student suspected of having a disability who requires special education or related services is referred to the CSE in accordance with Part 200 of the Commissioner's regulations, a board of education will meet the requirements for evaluation and placement of such children under §504 as well. To comply with §504 for children who do not require special education or related services, however, a school based team may conduct or review an assessment of the child's needs in order to recommend and provide the necessary adaptations to the regular school program.

Discipline of Children with Disabilities Covered by §504 of the Rehabilitation Act

According to OCR, a student suspension of more than ten days is a "significant change of placement" under §504 regulations. As noted earlier, the Rehabilitation Act requires a school district to conduct an evaluation and review of the student's placement prior to any significant change of placement (34 CFR §104.35[b]).

---

[10]A copy of the notice is attached in the Appendix.

Therefore, local policies must also include procedures to govern the discipline of students protected under §504 (as well as children covered under IDEA) to ensure that the necessary evaluations and placement reviews are conducted prior to any out-of-school suspension for more than ten days.

According to OCR, a significant change of placement includes suspensions of more than ten consecutive school days or, as determined on a case-by-case basis, short-term suspensions that create a pattern of exclusions equivalent to ten consecutive days or more. As the OCR memorandum advises, whether a series of short-term suspensions constitutes a "significant change in placement" depends on the length of each suspension, the proximity of the suspensions to each other, and the overall time of the suspensions (see, EHLR 307:05[1988]). Therefore, student discipline and §504 policies should include procedures to trigger automatic reviews of cumulative suspensions approaching ten days for students with disabilities to determine whether such suspensions constitute a significant change in placement.

According to OCR, whenever a suspension constitutes a "significant change of placement", a student with disabilities under §504 must be evaluated by the multidisciplinary team to determine whether the misconduct is related to the child's disability. Where the team concludes that a link exists between the child's disability and the behavior leading to the discipline, the team must conduct further evaluation to determine whether the student's current educational placement is appropriate. However, in those cases where the team concludes that the misbehavior is not related to the disability or the student is suspended for behavior related to the use of illegal drugs or alcohol, a board of education may discipline the student to the same extent it disciplines its non-disabled student population (29 USC §706[c][iv]). If the parent challenges the team's determination on whether the misbehavior was related to the student's disability, the parent has the right to request an impartial hearing. However, as indicated earlier, unlike the IDEA[11], §504 does not include a "pendency" provision that automatically extends to students, protected under §504, the right to remain in the current educational placement pending appeals.

Access to Non-academic and Extracurricular Services

Similar to provisions protecting students under the IDEA, §504 also requires local school districts to offer protected students equal opportunities to participate in nonacademic and extracurricular services and activities (34 CFR 104.37). In

---

[11]Unlike students protected solely under §504, students classified under Article 89 (and IDEA), may not be suspended for more than ten days (nor may the district, otherwise, change the student's placement without the parents'consent) during the pendency of appeals except pursuant to court order (see Honig v. Doe, 108 S. Ct. 592 (1988)).

particular, the §504 regulations require that students with disabilities be afforded full access to any counseling service offered by the district and prohibits districts from counseling such students toward more restricted career objectives than their nondisabled peers with similar interests or activities (34 CFR 104.37[b]).

Regarding athletic activities and physical education, §504 and IDEA require local school districts to ensure equal opportunities for the participation of all students with disabilities and require that students with disabilities participate with non-disabled students to the maximum extent appropriate to their needs (34 CFR 104.34(b)). For children who require adaptive physical education, Commissioner's regulations require adaptations for those students unable to participate in the regular program of physical education (8 NYCRR 135.4(c)(1)(iv)). For students with disabilities, separate physical education programs or athletic activities are permissible under §504 only to the extent necessary to meet their needs. In any case, such students may not be denied opportunities to compete for teams or participate in the same courses as students who are not disabled (34 CFR 104.37(c)).

Addendum - The Americans with Disabilities Act Implications for School Districts Pertaining to Students with Disabilities

In 1990, Congress passed the Americans with Disabilities Act (ADA). The law provides comprehensive civil rights protections to individuals with disabilities in employment, public accommodations, state and local government services and telecommunications. Regarding state and local government services, Title II of the ADA (42 USC 12134 et seq) extends §504 protections, already applicable to school districts by virtue of their receipt of federal funds, to all local and state entities. Since all school districts are subject to §504, full compliance with the §504 regulations should assure compliance with the ADA as it relates to the provision of a free appropriate public education. It should be noted, however, that under the ADA all local and state government entities, including school districts, were required to conduct "self-evaluations" by January 26, 1993, that affords individuals with disabilities or organizations representing individuals with disabilities opportunities for participation to assure compliance with ADA mandates (28 CFR 35.105). For districts that have already conducted self-evaluations under §504, the ADA limits the self-evaluation process to a review of those policies and practices not included in the §504 self-evaluation. In any case, districts that have not completed the self-evaluation process, should proceed to do so immediately.

To answer any questions pertaining to the materials presented in this memorandum, you may wish to contact a member of your Regional Field Services Team.

APPENDIX

A. Relevant Provisions of §504 Regulations

B. Memo dated 5/92 from Thomas Neveldine Regarding Students with Attention Deficit Disorder (ADD)

C. Chart: Comparison of IDEA, §504 and ADA in Relation to the Provision of a Free Appropriate Public Education

D. Forms:
- §504 Policy Regarding Students with Disabilities
- §504 Notice of Meeting
- Notice of Determination After Meeting
- §504 Accommodation Plan

cant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 104.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 104.22 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Small health, welfare, or other social service providers.* If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicappped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time

BEST COPY AVAILABLE

period of the transition plan is longer than one year, identify the steps of that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 104.23 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[45 FR 30936, May 9, 1980; 45 FR 37426, June 3, 1980; 55 FR 52138, 52141, Dec. 19, 1990]

Subpart D—Preschool, Elementary, and Secondary Education

§ 104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 104.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

§ 104.33 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual edu-

cational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education*—(1) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation.* If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) *Residential placement.* If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents.* If a recipient has made available, in conformance with the requirements of this section and § 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of § 104.36.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

§ 104.34 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting

other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

§ 104.35 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 104.34.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

§ 104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant rec-

ords, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

§ 104.37 Nonacademic services.

(a) *General.* (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of § 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

§ 104.38 Preschool and adult education programs.

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

§ 104.39 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in § 104.33(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of §§ 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of §§ 104.34, 104.37, and 104.38.

Subpart E—Postsecondary Education

§ 104.41 Application of this subpart.

Subpart E applies to postsecondary education programs and activities, including postsecondary vocational edu-

cation programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 104.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 104.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 104.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, *Provided,* That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

§ 104.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or ac-

EST COPY AVAILABLE

(aa) *Interpretation services for parents and persons in parental relationship who are hearing impaired.*

(1) Definitions. For purposes of this subdivision:

(i) *Hearing impaired* shall include any hearing impairment, whether permanent or fluctuating, the result of which prevents a meaningful participation in school district meetings or activities.

(ii) *Meeting* or *activity* shall mean those school-initiated meetings or activities attended by parents or persons in parental relationship who are hearing impaired, which are specific to the academic and/or disciplinary aspects of their child's educational program, including, but not limited to, parent-teacher conferences; child study or building level team meetings; planning meetings with school counselors regarding educational progress and career planning; suspension hearings or any conference with school officials relating to disciplinary actions.

(2) School district meetings and activities. At any meeting or activity which is conducted by the board of education, trustees, school district or a district school and attended by parents or persons in parental relationship who are hearing impaired, such board of education or trustees shall provide interpreter services at no charge to such parents or persons in parental relationship, provided that a written request therefore is made to the school district within the time limitation established by such board of education or trustees pursuant to paragraph (3) of this subdivision.

(i) In the event interpreter services are requested, the school district shall appoint an interpreter of the deaf to interpret during the meeting or activity.

(ii) In the event that an interpreter of the deaf is unavailable, the school district shall make other reasonable accommodations which are satisfactory to the parents or guardians.

(3) Each board of education or trustees shall adopt a policy which shall establish a reasonable time limitation for requesting interpreter services, examples of what constitutes reasonable accommodations pursuant to subparagraph (2)(ii) of this subdivision and how the provisions of this subdivision shall be implemented by such board of education or trustees.

Historical Note

Sec. amd. filed Sept. 25, 1973; repealed, new filed Dec. 12, 1984; amds. filed: Dec. 21, 1984; April 30, 1985; July 26, 1985; Sept. 24, 1985; June 25, 1986; Jan. 22, 1987; June 25, 1987; Nov. 2, 1987 as emergency measure; Dec. 15, 1987; May 24, 1988; Aug. 2, 1988; Sept. 23, 1988 as emergency measure; Nov. 22, 1988; May 23, 1989 as emergency measure; Aug. 1, 1989; Sept. 19, 1989 as emergency measure; Nov. 21, 1989; Sept. 18, 1990 as emergency measure; Nov. 20, 1990; Nov. 20, 1990 as emergency measure; Jan. 24, 1991; July 30, 1991 as emergency measure; Sept. 17, 1991; May 1, 1992, Dec. 22, 1992 as emergency measure; Feb. 23, 1993 eff. March 11, 1993. Added (aa).

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

ASSISTANT COMMISSIONER FOR SPECIAL EDUCATION SERVICES

May 1992

TO: District Superintendents
Presidents of Boards of Education
Superintendents of Schools
Directors of Special Education
Directors of Pupil Personnel Services
Directors of Approved Preschool Programs
Executive Directors of Approved Private Schools
Principals of Public Schools
Chairpersons of Committees on Special Education
Chairpersons of Committees on Preschool Special Education
School Psychologists
OSES Commissioner's Advisory Panel
Impartial Hearing Officers
SETRC Project Directors and Training Specialists
ECDC Project Directors and Coordinators
Student and Parent Advocacy Networks

FROM: Thomas B. Neveldine

SUBJECT: Update on Students with Attention Deficit Disorder (ADD)

The United States Department of Education (Office for Civil Rights, Office of Special Education and Rehabilitative Services, and Office of Elementary and Secondary Education) issued a "clarification of policy" memorandum regarding the needs of children with ADD (DPS Memorandum 92-013). As the memo indicates, ADD has not been added as a separate disability category in the Individuals with Disabilities Education Act (IDEA). A copy of that memo is attached for your information.

It is important to note that this federal memo does not signify a change in policy or a new regulation, but simply clarifies existing procedures. This does not mean that school districts need to establish separate classrooms for students with attention deficit disorders. On the contrary, it is the position of the New York State Education Department that most students with ADD should not require special education or related services and can be served in regular classrooms with appropriate modifications, accommodations and support. Key points of the United States Department of Education's "clarification of policy" memo

regarding the needs of children with ADD are summarized below.

- Students with ADD may be eligible for services under IDEA if they meet the eligibility criteria applicable under the disability categories of the Act. These may include "Other Health Impaired," "Seriously Emotionally Disturbed" or "Specific Learning Disability."

- Students who do not meet the eligibility requirements under the IDEA may, nonetheless, be "handicapped" under Section 504 of the Rehabilitation Act of 1973. The definition of "handicapped persons" in Section 504 is "... any person who has a physical or mental impairment which substantially limits a major life activity...." Depending on the severity of the ADD, a student may be covered under Section 504.

- School districts are responsible for evaluating all children who may need special education and related services, including students with a medical diagnosis of ADD. A district cannot refuse to evaluate a child.

- If a child with ADD is determined eligible for services under the IDEA, an individualized education program (IEP) as prescribed in the IDEA, must be developed and a full continuum of placement alternatives, including the regular classroom, must be available for providing special education and related services as specified in the IEP.

- If there is a disagreement over a child's eligibility for special education, the parent may request a due process hearing, pursuant to the IDEA.

- If a child is handicapped as defined by Section 504, he or she must be provided with an "individualized education program." Section 504 indicates that an "IEP" as specified in IDEA is "one means of meeting the free appropriate public education requirements under Section 504." Another way is to document the specific accommodations which the district will provide to the child in the regular classroom which must be maintained in the child's cumulative file.

In summary, students who are referred to the CSE because of a suspected disability must receive a nondiscriminatory, multidisciplinary evaluation to determine eligibility for special education services as prescribed in current federal and State laws and regulations. A student determined eligible for special education programs or services, must be identified as "a child with a handicapping condition" under Article 89 of the Education Law with all the rights thereunder.

If you have any questions, please contact the nearest regional office of the Division of Program Monitoring or the Division of Program Development and Support Services at (518) 474-8917.

Attachment

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

THE ASSISTANT SECRETARY

MEMORANDUM

SEP 16 1991

DATE :

TO : Chief State School Officers

FROM : Robert R. Davila
Assistant Secretary
Office of Special Education
and Rehabilitative Services

Michael L. Williams
Assistant Secretary
Office for Civil Rights

John T. MacDonald
Assistant Secretary
Office of Elementary
and Secondary Education

SUBJECT: Clarification of Policy to Address the Needs of Children with Attention Deficit Disorders within General and/or Special Education

I. Introduction

There is a growing awareness in the education community that attention deficit disorder (ADD) and attention deficit hyperactive disorder (ADHD) can result in significant learning problems for children with those conditions.[1] While estimates of the prevalence of ADD vary widely, we believe that three to five percent of school-aged children may have significant educational problems related to this disorder. Because ADD has broad implications for education as a whole, the Department believes it should clarify State and local responsibility under Federal law for addressing the needs of children with ADD in the schools. Ensuring that these students are able to reach their fullest potential is an inherent part of the National education goals and AMERICA 2000. The National goals, and the strategy for achieving them, are based on the assumptions that: (1) all children can learn and benefit from their education; and (2) the educational community must work to improve the learning opportunities for all children.

---

[1] While we recognize that the disorders ADD and ADHD vary, the term ADD is being used to encompass children with both disorders.

BEST COPY AVAILABLE

This memorandum clarifies the circumstances under which children with ADD are eligible for special education services under Part B of the Individuals with Disabilities Education Act (Part B), as well as the Part B requirements for evaluation of such children's unique educational needs. This memorandum will also clarify the responsibility of State and local educational agencies (SEAs and LEAs) to provide special education and related services to eligible children with ADD under Part B. Finally, this memorandum clarifies the responsibilities of LEAs to provide regular or special education and related aids and services to those children with ADD who are not eligible under Part B, but who fall within the definition of "handicapped person" under Section 504 of the Rehabilitation Act of 1973. Because of the overall educational responsibility to provide services for these children, it is important that general and special education coordinate their efforts.

II. Eligibility for Special Education and Related Services under Part B

Last year during the reauthorization of the Education of the Handicapped Act (now the Individuals with Disabilities Education Act), Congress gave serious consideration to including ADD in the definition of "children with disabilities" in the statute. The Department took the position that ADD does not need to be added as a separate disability category in the statutory definition since children with ADD who require special education and related services can meet the eligibility criteria for services under Part B. This continues to be the Department's position.

No change with respect to ADD was made by Congress in the statutory definition of "children with disabilities;" however, language was included in Section 102(a) of the Education of the Handicapped Act Amendments of 1990 that required the Secretary to issue a Notice of Inquiry (NOI) soliciting public comment on special education for children with ADD under Part B. In response to the NOI (published November 29, 1990 in the Federal Register), the Department received over 2000 written comments, which have been transmitted to the Congress. Our review of these written comments indicates that there is confusion in the field regarding the extent to which children with ADD may be served in special education programs conducted under Part B.

A. Description of Part B

Part B requires SEAs and LEAs to make a free appropriate public education (FAPE) available to all eligible children with disabilities and to ensure that the rights and protections of Part B are extended to those children and their parents. 20 U.S.C. 1412(2); 34 CFR §§300.121 and 300.2. Under Part B, FAPE, among other elements, includes the provision of special education and related services, at no cost to parents, in

conformity with an individualized education program (IEP). 34 CFR §300.4.

In order to be eligible under Part B, a child must be evaluated in accordance with 34 CFR §§300.530-300.534 as having one or more specified physical or mental impairments, and must be found to require special education and related services by reason of one or more of these impairments.[1] 20 U.S.C. 1401(a)(1); 34 CFR §300.5. SEAs and LEAs must ensure that children with ADD who are determined eligible for services under Part B receive special education and related services designed to meet their unique needs, including special education and related services needs arising from the ADD. A full continuum of placement alternatives, including the regular classroom, must be available for providing special education and related services required in the IEP.

B. Eligibility for Part B services under the "Other Health Impaired" Category

The list of chronic or acute health problems included within the definition of "other health impaired" in the Part B regulations is not exhaustive. The term "other health impaired" includes chronic or acute impairments that result in limited alertness, which adversely affects educational performance. Thus, children with ADD should be classified as eligible for services under the "other health impaired" category in instances where the ADD is a chronic or acute health problem that results in limited alertness, which adversely affects educational performance. In other words, children with ADD, where the ADD is a chronic or acute health problem resulting in limited alertness, may be considered disabled under Part B solely on the basis of this disorder within the "other health impaired" category in situations where special education and related services are needed because of the ADD.

C. Eligibility for Part B services under Other Disability Categories

Children with ADD are also eligible for services under Part B if the children satisfy the criteria applicable to other disability categories. For example, children with ADD are also eligible for services under the "specific learning disability" category of

---

[1] The Part B regulations define 11 specified disabilities. 34 CFR §300.5(b)(1)-(11). The Education of the Handicapped Act Amendments of 1990 amended the Individuals with Disabilities Education Act (formerly the Education of the Handicapped Act) to specify that autism and traumatic brain injury are separate disability categories. See section 602(a)(1) of the Act, to be codified at 20 U.S.C. 1401(a)(1).

BEST COPY AVAILABLE

Part B if they meet the criteria stated in §§300.5(b)(9) and 300.541 or under the "seriously emotionally disturbed" category of Part B if they meet the criteria stated in §300.5(b)(8).

III. Evaluations under Part B

A. Requirements

SEAs and LEAs have an affirmative obligation to evaluate a child who is suspected of having a disability to determine the child's need for special education and related services. Under Part B, SEAs and LEAs are required to have procedures for locating, identifying and evaluating all children who have a disability or are suspected of having a disability and are in need of special education and related services. 34 CFR §§300.128 and 300.220. This responsibility, known as "child find," is applicable to all children from birth through 21, regardless of the severity of their disability.

Consistent with this responsibility and the obligation to make FAPE available to all eligible children with disabilities, SEAs and LEAs must ensure that evaluations of children who are suspected of needing special education and related services are conducted without undue delay. 20 U.S.C. 1412(2). Because of its responsibility resulting from the FAPE and child find requirements of Part B, an LEA may not refuse to evaluate the possible need for special education and related services of a child with a prior medical diagnosis of ADD solely by reason of that medical diagnosis. However, a medical diagnosis of ADD alone is not sufficient to render a child eligible for services under Part B.

Under Part B, before any action is taken with respect to the initial placement of a child with a disability in a program providing special education and related services, "a full and individual evaluation of the child's educational needs must be conducted in accordance with requirements of §300.532." 34 CFR §300.531. Section 300.532(a) requires that a child's evaluation must be conducted by a multidisciplinary team, including at least one teacher or other specialist with knowledge in the area of suspected disability.

B. Disagreements over Evaluations

Any proposal or refusal of an agency to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child is subject to the

written prior notice requirements of 34 CFR §§300.504-300.505.[1] If a parent disagrees with the LEA's refusal to evaluate a child or the LEA's evaluation and determination that a child does not have a disability for which the child is eligible for services under Part B, the parent may request a due process hearing pursuant to 34 CFR §§300.506-300.513 of the Part B regulations.

IV. Obligations Under Section 504 of SEAs and LEAs to Children with ADD Found Not To Require Special Education and Related Services under Part B

Even if a child with ADD is found not to be eligible for services under Part B, the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 CFR Part 104 may be applicable. Section 504 prohibits discrimination on the basis of handicap by recipients of Federal funds. Since Section 504 is a civil rights law, rather than a funding law, its requirements are framed in different terms than those of Part B. While the Section 504 regulation was written with an eye to consistency with Part B, it is more general, and there are some differences arising from the differing natures of the two laws. For instance, the protections of Section 504 extend to some children who do not fall within the disability categories specified in Part B.

A. Definition

Section 504 requires every recipient that operates a public elementary or secondary education program to address the needs of children who are considered "handicapped persons" under Section

---

[1] Section 300.505 of the Part B regulations sets out the elements that must be contained in the prior written notice to parents:

> (1) A full explanation of all of the procedural safeguards available to the parents under Subpart E;
> (2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;
> (3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and
> (4) A description of any other factors which are relevant to the agency's proposal or refusal.

34 CFR §300.505(a)(1)-(4).

BEST COPY AVAILABLE

504 as adequately as the needs of nonhandicapped persons are met. "Handicapped person" is defined in the Section 504 regulation as any person who has a physical or mental impairment which substantially limits a major life activity (e.g., learning). 34 CFR §104.3(j). Thus, depending on the severity of their condition, children with ADD may fit within that definition.

B. Programs and Services Under Section 504

Under Section 504, an LEA must provide a free appropriate public education to each qualified handicapped child. A free appropriate public education, under Section 504, consists of regular or special education and related aids and services that are designed to meet the individual student's needs and based on adherence to the regulatory requirements on educational setting, evaluation, placement, and procedural safeguards. 34 CFR §§104.33, 104.34, 104.35, and 104.36. A student may be handicapped within the meaning of Section 504, and therefore entitled to regular or special education and related aids and services under the Section 504 regulation, even though the student may not be eligible for special education and related services under Part B.

Under Section 504, if parents believe that their child is handicapped by ADD, the LEA must evaluate the child to determine whether he or she is handicapped as defined by Section 504. If an LEA determines that a child is not handicapped under Section 504, the parent has the right to contest that determination. If the child is determined to be handicapped under Section 504, the LEA must make an individualized determination of the child's educational needs for regular or special education or related aids and services. 34 CFR §104.35. For children determined to be handicapped under Section 504, implementation of an individualized education program developed in accordance with Part B, although not required, is one means of meeting the free appropriate public education requirements of Section 504.[4] The child's education must be provided in the regular education classroom unless it is demonstrated that education in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §104.34.

Should it be determined that the child with ADD is handicapped for purposes of Section 504 and needs only adjustments in the regular classroom, rather than special education, those adjustments are required by Section 504. A range of strategies is available to meet the educational needs of children with ADD.

---

[4]Many LEAs use the same process for determining the needs of students under Section 504 that they use for implementing Part B.

Regular classroom teachers are important in identifying the appropriate educational adaptions and interventions for many children with ADD.

SEAs and LEAs should take the necessary steps to promote coordination between special and regular education programs. Steps also should be taken to train regular education teachers and other personnel to develop their awareness about ADD and its manifestations and the adaptations that can be implemented in regular education programs to address the instructional needs of these children. Examples of adaptations in regular education programs could include the following:

> providing a structured learning environment; repeating and simplifying instructions about in-class and homework assignments; supplementing verbal instructions with visual instructions; using behavioral management techniques; adjusting class schedules; modifying test delivery; using tape recorders, computer-aided instruction, and other audio-visual equipment; selecting modified textbooks or workbooks; and tailoring homework assignments.

Other provisions range from consultation to special resources and may include reducing class size; use of one-on-one tutorials; classroom aides and note takers; involvement of a "services coordinator" to oversee implementation of special programs and services, and possible modification of nonacademic times such as lunchroom, recess, and physical education.

Through the use of appropriate adaptations and interventions in regular classes, many of which may be required by Section 504, the Department believes that LEAs will be able to effectively address the instructional needs of many children with ADD.

C. Procedural Safeguards Under Section 504

Procedural safeguards under the Section 504 regulation are stated more generally than in Part B. The Section 504 regulation requires the LEA to make available a system of procedural safeguards that permits parents to challenge actions regarding the identification, evaluation, or educational placement of their handicapped child whom they believe needs special education or related services. 34 CFR §104.36. The Section 504 regulation requires that the system of procedural safeguards include notice, an opportunity for the parents or guardian to examine relevant records, an impartial hearing with opportunity for participation by the parents or guardian and representation by counsel, and a

BEST COPY AVAILABLE

review procedure. Compliance with procedural safeguards of Part B is one means of fulfilling the Section 504 requirement.[1] However, in an impartial due process hearing raising issues under the Section 504 regulation, the impartial hearing officer must make a determination based upon that regulation.

V. Conclusion

Congress and the Department have recognized the need to provide information and assistance to teachers, administrators, parents and other interested persons regarding the identification, evaluation, and instructional needs of children with ADD. The Department has formed a work group to explore strategies across principal offices to address this issue. The work group also plans to identify some ways that the Department can work with the education associations to cooperatively consider the programs and services needed by children with ADD across special and regular education.

In fiscal year 1991, the Congress appropriated funds for the Department to synthesize and disseminate current knowledge related to ADD. Four centers will be established in Fall, 1991 to analyze and synthesize the current research literature on ADD relating to identification, assessment, and interventions. Research syntheses will be prepared in formats suitable for educators, parents and researchers. Existing clearinghouses and networks, as well as Federal, State and local organizations will be utilized to disseminate these research syntheses to parents, educators and administrators, and other interested persons.

In addition, the Federal Resource Center will work with SEAs and the six regional resource centers authorized under the Individuals with Disabilities Education Act to identify effective identification and assessment procedures, as well as intervention strategies being implemented across the country for children with ADD. A document describing current practice will be developed and disseminated to parents, educators and administrators, and other interested persons through the regional resource centers network, as well as by parent training centers, other parent and consumer organizations, and professional organizations. Also, the Office for Civil Rights' ten regional offices stand ready to provide technical assistance to parents and educators.

It is our hope that the above information will be of assistance to your State as you plan for the needs of children with ADD who require special education and related services under Part B, as well as for the needs of the broader group of children with ADD

---

[1]Again, many LEAs and some SEAs are conserving time and resources by using the same due process procedures for resolving disputes under both laws.

BEST COPY AVAILABLE

who do not qualify for special education and related services under Part B, but for whom special education or adaptations in regular education programs are needed. If you any questions, please contact Jean Peelen, Office for Civil Rights; (Phone: 202/732-1635), Judy Schrag, Office of Special Education Programs (Phone: 202/732-1007); or Dan Bonner, Office of Elementary and Secondary Education (Phone: 202/401-0984).

Comparison of IDEA, §504 and ADA in Relation to the Provision of a Free Appropriate Public Education

	IDEA and Article 89	Section 504 of the Rehabilitation Act (§504)	The Americans with Disabilities Act (ADA)
YEAR ENACTED	1975	1973	1990
LEGAL CITATION	20 USC 1400 et seq. 34 CFR Part 300	29 USC 794 34 CFR Part 104	42 USC 12134 28 CFR Part 35
RELEVANT STATE LAW	Education Law, Article 89 [§4401 - 4410(a)] 8 NYCRR Part 200	8 NYCRR § 100.2 (k)	8 NYCRR § 100.2 (k)
WHAT IS FAPE	The provision of special education and related services...provided at public expense in conformity with an IEP in a manner reasonably calculated to enable the child to receive educational benefit	The provision of regular or special education and related aids and services designed to meet the individual educational needs of disabled persons as adequately as the needs of non-disabled persons are met	
LRE	The placement of students with disabilities in special classes, separate schools or other removal from the regular educational environment occurs only when the nature or severity of the disability is such that even with the use of supplementary aids and services, education cannot be satisfactorily achieved. In addition, the placement must provide the special education needed by the student, provide for education, to the maximum extent appropriate to the needs of the student with other students who do not have a disability and be as close as possible to the student's home. 8 NYCRR 100.2(s) requires that instruction be modified to the extent appropriate to provide opportunities to meet diploma requirements	The student shall be placed in the regular educational environment unless the child's education cannot be achieved satisfactorily even with the use of supplementary aids and services	

	IDEA and Article 89	Section 504	ADA
TYPE OF STATUTE	Federal funding statute providing federal aid to states that ensure the provision of free appropriate public education (FAPE) to children with disabilities	Civil rights statute protecting individuals with disabilities* from discrimination in programs and activities receiving federal funds	Broader civil rights statute than §504 extending protections to individuals with disabilities in private industry employing more than 15 individuals, public entities, public accommodations, telecommunications and private nonsectarian schools. (See New York State Human Rights Law - Executive Law §290 et. seq.)
WHO IS COVERED	Infants and toddlers with disabilities 0 - 2; children 3 to 21 who meet the definition of a preschool child with a disability or one of thirteen categories of disabilities applicable to school age children	Any person with a physical/mental impairment which substantially limits one or more major life activities (self care, manual tasks, walking, seeing, hearing, breathing, learning/working), who has a record of such an impairment, or is regarded as having such an impairment	Any person with a physical/mental impairment which substantially limits one or more major life activity (self care, manual tasks, walking, seeing, hearing, breathing, learning/working), has a record of such an impairment, or is regarded as having such an impairment
MAJOR PROVISIONS	Ensures procedural safeguards and the right to free appropriate public education in the least restrictive environment in accordance with the IDEA	No otherwise qualified individual** with disabilities shall solely by reason of her or his disability be: - excluded from participation in - denied the benefits of - or be subjected to discrimination under any program or activity receiving federal financial assistance	No otherwise qualified individual with disabilities shall by reason of her or his disability be: - excluded from participation in - denied the benefits of - subject to discrimination by any services, programs or activities of a public entity

** Although §504 of the Rehabilitation Act continues to use the term "handicapped", this chart refers to students protected under §504 as "disabled".*

*** An "otherwise qualified individual" for purposes of eligibility for school programs is one who meets the age and residency requirements.*

	IDEA and Article 89	Section 504	ADA
PROGRAM ACCESS	Each public agency shall take steps to provide nonacademic services and activities in such manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities [34 CFR 300.306] 8 NYCRR 200.2(b) - each school board must have policies to ensure that students with disabilities residing in the district have the opportunity to participate in school district programs, to the maximum extent appropriate to the needs of the student including extracurricular programs and activities which are available to all other students enrolled in the public schools 8 NYCRR 100.2(k) - No student shall be denied membership or participation on the basis of disability in any program of curricular and extracurricular activities provided that in the case of children with disabilities such activities shall be appropriate to the student's special educational needs as identified by the CSE	**RULE:** No qualified individual with a disability shall, because a recipient's facilities are inaccessible or unusable by disabled individuals, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity Does not require recipients to make each of its existing facilities or every part of an existing facility accessible (1) the program may redesign equipment (2) reassign classes to accessible buildings (3) assign an aid, etc. With priority to those methods that offer programs and activities to disabled persons in the most integrated setting appropriate New construction or alterations after June 3, 1977 must be accessible	**RULE:** No qualified individual with a disability shall, because a public entity's facilities are inaccessible or unusable by individuals with disabilities, be denied the benefits of its services, programs or activities, or be subjected to discrimination **EXCEPT** - Does not necessarily require a public entity to make each of its existing facilities accessible to individuals with disabilities [same rule as §504 applies] Does not require the public entity to fundamentally alter the nature of the service, program or activity or incur an undue financial and administrative burden however, this does not relieve the public entity from providing access to individuals with disabilities through other means New construction or alterations after January 26, 1992 must be accessible
DEFINITION OF AUXILIARY AIDS AND SERVICES		Taped texts, interpreters, readers, etc. (as applied to post-secondary education)	Services such as, but not limited to, qualified interpreters, notetakers, transcription services, written materials assistive listening devices, videotext displays, open and closed captions etc. Qualified readers, taped text, audio recordings, braille, large print etc.
COMPLIANCE / ENFORCEMENT	Office of Special Education Programs (OSEP); SED - non-compliance may result in loss of IDEA funds and state aid Administrative appeals and/or courts	Office for Civil Rights, United States Department of Education (OCR). - non-compliance may result in loss of all federal funds Administrative appeals and/or courts	Office for Civil Rights (OCR) Department of Justice (DOJ) - non-compliance may result in loss of all federal funds Administrative appeals and/or courts

	IDEA and Article 89	Section 504	ADA
INTERNAL GRIEVANCE PROCEDURE	State complaint procedure required (34 CFR 300.660)	Requires districts with 15 or more employees to designate a §504 compliance officer and a grievance procedure to investigate complaints alleging noncompliance with §504	Requires public entities with more than 50 employees to designate a compliance officer and a grievance procedure to investigate complaints alleging noncompliance with the ADA
PROTECTION AGAINST RETALIATION		Incorporates prohibition against retaliation, intimidation, coercion, threats, and discrimination found in regulations under Title VI of the Civil Rights Act	Extends protections to nondisabled individuals who have testified or participated in any manner in an investigation, proceeding or hearing under the ADA
SCHOOL BOARD POLICY	8 NYCRR 200.2(b) 8 NYCRR 100.2(l)(1) discipline policy for children with disabilities	Requires written policies advising parents and their disabled students of the district's responsibility to identify, evaluate and provide FAPE to children with disabilities 8 NYCRR 100.2(aa) Board policy governing requests by hearing impaired adults for interpreter services	
SELF EVALUATION		Requires recipients to conduct a self-evaluation to identify discriminatory policies and steps to modify any discriminatory policies and practices	By January 26, 1993, school districts were required to update its §504 self-evaluation to assure compliance with the ADA which must involve constituent groups
PROCEDURAL SAFEGUARDS NOTICE	Requires written notice in the parent's dominant language prior to the initiation, change or refusal to change the identification, evaluation or educational placement of a child or the provision of FAPE	Although §504 regulations do not specifically require written notice of actions to identify, evaluate or place a child who may be disabled under §504, such notice should be provided in writing, it is advisable to follow IDEA procedures	

COMPONENTS OF NOTICE TO PARENTS	8 NYCRR 200.5(a) and 34 CFR 300.505
NOTICE OF THE RIGHT TO AN INDEPENDENT EVALUATION AND PENDENCY	A parent who disagrees with the evaluation obtained by the school district has the right to an independent evaluation at public expense unless the district initiates an impartial hearing and the district's evaluation is found to be appropriate. Right to remain in the "status quo" placement pending appeals
EVALUATIONS	A comprehensive evaluation assessing all areas related to the child's suspected disability, including, but not limited to, at a minimum, a physical, a social history, a classroom observation, a psychological evaluation as deemed necessary by a school psychologist and a vocational assessment for children over age 12 Evaluation must be conducted by a multi-disciplinary team and may not rely on one procedure as the sole criteria for determining FAPE Any evaluation submitted by a parent must be considered by the multidisciplinary team
REEVALUATION	Every three years or more frequently, as needed, or upon the request of the parent

Section 504	ADA
Right to review records Notice of meetings Notice of right to request an impartial hearing and right to an attorney	
The evaluation must draw on information from a variety of sources including aptitude and achievement tests, teacher recommendations, physical conditions, social or cultural background and adaptive behaviors, information must be documented	
Required prior to any significant change of placement (i.e. suspension for more than 10 days). Periodic reevaluation See 100.2(j)(1)(a) Requires guidance program to provide annual review of <u>all</u> student's educational progress with such reviews to be conducted with each student individually or with small groups by qualified school counselors	

	IDEA and Article 89
CONSENT	Parent must consent to the evaluation and placement of a student not previously identified with a disability or first recommended for twelve month services or programs *Consent is voluntary on the part of the parent and may be withdrawn at any time
MULTI-DISCIPLINARY TEAM	Committee/Subcommittee on Special Education or Committee on Preschool Special Education, as applicable, develops the IEP
DOCUMENTATION OF PLACEMENT	Individualized Education Program (IEP)
DUE PROCESS	Right to an impartial hearing and review by the State review officer, including the right to representation by counsel, to review any action involving the identification, evaluation, educational placement or the provision of FAPE to a child with a disability as defined under the IDEA
DISCIPLINE	General procedures governing all children including children with disabilities - see Education Law §3214 and 8 NYCRR 100.2(l)(4) Any suspension of 10 consecutive days or more is a significant change of placement triggering the procedural safeguards of IDEA including the right to remain in the current educational placement pending appeals Cumulative suspensions of more than 10 days within the school year may trigger the procedural safeguards under the IDEA Cannot terminate FAPE as a disciplinary measure 8 NYCRR 100.2(l)(1)

Section 504	ADA
Although not specifically required under §504, parental consent should be obtained prior to initial evaluation and accommodation plan	
Group of individuals knowledgeable about the student, evaluations and placement options develop an "accommodation plan"	
Although not required, in writing, a written "Accommodation Plan" is recommended (Implementation of an IEP in accordance with the IDEA is one way to document an appropriate education)	
Right to an impartial hearing and a review procedure, including the right to representation by counsel, to challenge any action regarding the identification, evaluation and educational placement of persons who, because of a disability, need or are believed to need special instruction or related services under §504	
- District must reevaluate the child prior to any suspension of 10 days or more - Is there a nexus between the child's disability and the behavior complained of? If "Yes", the child may not be suspended for more than 10 days unless the behavior is drug/alcohol related - No automatic right to remain in the current educational placement	Amends 504 - to create exception for discipline of drug and alcohol related behavior

Sample §504 Policy Regarding Students with Disabilities

Section 504 is a federal civil rights statute that prohibits discrimination against persons with disabilities in programs receiving federal financial assistance. The Act protects individuals with a disability who:

1. have a physical or mental impairment which substantially limits one or more major life activity (major life activities include activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

2. have a record of such impairment; or

3. are regarded as having such an impairment.

The _____ School District does not discriminate against persons with disabilities and provides access to qualified disabled individuals to all of its activities and programs.

The Act also obligates school districts to identify, evaluate, and to extend to every qualified student with a disability residing in the district, a free appropriate public education, including modifications, accommodations, specialized instruction or related aids as deemed necessary to meet their educational needs as adequately as the needs of non-disabled students are met. If you believe your child may have a disability that requires modifications or accommodations to his or her educational program, please contact _____

_____

SAMPLE §504

NOTICE OF MEETING

Dear Parent or Guardian:

Based on concerns regarding your child's academic performance, we would like to meet with you on _____ at _____ to discuss the need to provide programmatic accommodations for your _____(son/daughter)_____. Given the importance of the meeting, we urge your participation.

If you have any questions, or the scheduled meeting time is not convenient for you, please call me by _____ at _____. In addition, if you wish to review your (son's/daughter's) educational records, including any materials that will be discussed at the meeting, please call me to schedule a mutually convenient time for such review. If I do not hear from you, I will look forward to seeing you at our scheduled meeting.

Sincerely,

Name and Title

cc: Student's Cumulative File

OC-9 (5/93)

Notice of Determination After Meeting

Dear

As you know, on _____, we met to discuss your child's academic progress. Based on the materials before us, we determined that:

1. Your child has a disability under §504 of the Rehabilitation Act that requires an accommodation plan to ensure his/her full access to all school activities. A copy of the plan is enclosed for your review.

2. Your child is not disabled and does not require an accommodation plan to address his/her educational deficiencies.

If you disagree with our determination, I would be happy to meet with you to discuss your concerns. If you wish, you also have the right to request an impartial hearing and to bring an attorney to represent you. If you wish to proceed to a formal hearing, please send a written request to _____ at _____. If you have any questions or would like to schedule a meeting, please do not hesitate to contact me at _____.

Sincerely,

cc: Student's Cumulative File

§504 Accommodation Plan

NAME	DATE OF BIRTH	GRADE
SCHOOL	DATE OF MEETING	

1. *Describe the nature of the problem:* .....

2. *Evaluations completed - including dates of each evaluation:* .....

3. *The basis for determining that the child has a disability (if any):* .....

4. *Describe the nature of the child's disability:* .....

5. *Does the disability affect a major life activity? If "Yes", explain how:* .....

6. *List the accommodations (i.e. specialized instruction or equipment, auxiliary aids or services, program modifications, etc.) the team recommends as necessary to ensure the child's access to all district programs:*

Review/Reassessment Date: ..... *(must be completed)*

Participants *(name and title)*

.....

cc: Student's Cumulative File

Attachment: Information regarding §504 of the Rehabilitation Act of 1973
Due Process Notice

OC-4 (5/93)

NEW YORK STATE EDUCATION DEPARTMENT
ALBANY, NEW YORK 12234

NON PROFIT ORG
U.S. POSTAGE
PAID
Albany, N.Y.
Permit No. 293

3-008294
129300